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In re Application of
Ikeda et al.
Application No.: 10/599,706
PCT No.: PCT/JP2005/006533
Int. Filing Date: 28 March 2005
Priority Date: 06 April 2004
Attorney Docket No.: P30934
For: Bending Apparatus

: : : : DECISION

This is with regard to the correspondence filed on 09 April 2008.

BACKGROUND

This international application was filed on 28 March 2005, designated the United States, and claimed an earliest priority date of 06 April 2004. The International Bureau transmitted a copy of the published international application to the USPTO on 20 October 2005. Accordingly, the 30 month time period for paying the basic national fee in the United States expired at midnight on 06 October 2006. Applicants filed *inter alia* a small entity basic national fee on 05 October 2006.

On 08 February 2007, applicants filed *inter alia* a declaration.

On 05 June 2007, a Notification of Missing Requirements (Form PCT/DO/EO/905) was transmitted to applicant, requiring an English translation, the processing fee under 37 CFR 1.492(i) and the surcharge under 37 CFR 1.492(h).

On 06 July 2007, applicants filed a response.

On 10 March 2008, a Notification of Defective Response (Form PCT/DO/EO/916) was mailed to applicants, requiring the submission of an oath or declaration compliant with 37 CFR 1.497(a) and (b), explaining that the "Third inventors name listed as Kazuhiro Kanno on declaration and as Kazuhiro Sugano on International Application. Please clarify."

DISCUSSION

Review of the record reveals that the published international application nominates "SUGANO, Kazuhiro" as the third inventor, whereas the declaration filed on 08 February 2007 names "Kazuhiro KANNO." Counsel explains this discrepancy as follows:

However, SUGANO, Kazuhiro was a transliteration error (MPEP § 201.03(b)) in the English language version of the PCT application filed upon entering the national stage in the U.S. in this matter, and should have been listed as KANNO, Kazuhiro. Thus, Applicants respectfully submit that the executed Declaration, including the name of the inventor, KANNO, Kazuhiro, which was filed in the Office on February 8, 2007, is correct and should be accepted.

MPEP 605.04(b) explains in part that

When a typographical or transliteration error in the spelling of an inventor's name is discovered during pendency of an application, a petition is not required, nor is a new oath or declaration under 37 CFR 1.63 needed. However, applicants are strongly encouraged to use an application data sheet such that any patent to issue will reflect the correct spelling of the inventor's name. Without an application data sheet with the corrected spelling, any patent to issue is less likely to reflect the correct spelling since the spelling of the inventor's name is taken from the oath or declaration, or any subsequently filed application data sheet.

In view of counsel's characterization of the discrepancy as arising from a transliteration error, and indication that the correct name is in fact Kanno, it would be appropriate to accept the spelling as Kanno, as it appears on the declaration filed on 08 February 2007.

However, further review of the declaration reveals that it does not appear to have been made on a dual language form provided by the USPTO. 37 CFR 1.69(b) provides that

Unless the text of any oath or declaration in a language other than English is in a form provided by the Patent and Trademark Office or in accordance with PCT Rule 4.17(iv), it must be accompanied by an English translation together with a statement that the translation is accurate, except that in the case of an oath or declaration filed under § 1.63, the translation may be filed in the Office no later than two months from the date applicant is notified to file the translation.

In view of 37 CFR 1.69(b), applicants are required to provide a statement that the translation is accurate.

DECISION

The declaration filed on 08 February 2007 is **NOT ACCEPTED**, without prejudice, as described above..

A proper response must be filed within **ONE (1) MONTH** from the mail date of this decision. Extensions of time may **NOT** be obtained under 37 CFR 1.136(a). Failure to timely file a proper response will result in **ABANDONMENT**.

Please direct any further correspondence with respect to this matter to the Assistant Commissioner for Patents, Mail Stop PCT, P.O. Box 1450, Alexandria, VA 22313-1450, and address the contents of the letter to the attention of the Office of PCT Legal Administration.

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